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November 12, 2013

**VIA ECF**

Magistrate Judge James L. Cott  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

**Re: *Hernandez, et al. v. The Fresh Diet, Inc., et al.***  
**12 Civ. 4339 (ALC) (JLC)**

Dear Judge Cott:

This office represents the Defendants in the above referenced matter. We respectfully write this letter to request a pre-motion conference on Defendants' anticipated motion for sanctions, pursuant to Fed. R. Civ. P. 37(b)(2), based on Plaintiffs' failure to comply with this Court's October 16, 2013 Order (the "Order").

Briefly, as Your Honor may recall, the parties appeared for a status conference on October 16, 2013 to address outstanding discovery issues. Specifically, at the conference, Defendants raised Plaintiffs' failure to produce, *inter alia*, tax returns for the time they performed work as delivery drivers for Defendants, which documents were requested in Defendants' first document request, as well as at plaintiffs' depositions. As discussed with the Court, certain information from the tax returns is highly relevant to the issue in this case, being whether or not plaintiffs were properly classified as independent contractors. See, e.g., Browning v. Ceva Freight, LLC, 885 F. Supp.2d 590 (E.D.N.Y. 2012). At the conclusion of the conference, the Court directed the parties to meet and confer on October 18, 2013 to address the outstanding discovery items, and for Plaintiffs to produce the documents ten (10) days thereafter if the parties agreed on the production. *See ECF No. 111*.

Accordingly, on October 18, 2013, at approximately 2:00 p.m., I spoke with Plaintiffs' counsel, Peter Andrews, for about twenty-five (25) minutes to discuss the items we were requesting. During this meet and confer, I advised Mr. Andrews that we were seeking production of documents identified at Plaintiffs' depositions that were not previously produced. More specifically, we spoke about Plaintiffs' tax returns for the years they worked as drivers for Defendants and agreed that any confidential information from the tax returns could be redacted. Our office indicated that we were only interested in seeing how Plaintiffs designated the compensation they received from Defendants, as well as any related deductions and/or credits they may have taken. Mr. Andrews agreed to produce the documents.

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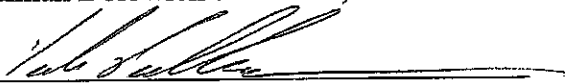
On October 22, 2013, we wrote to Plaintiffs' counsel to inquire about the status of the outstanding documents and were advised that they will update us on the status of documents at a later time. By October 28, 2013 (the deadline in the Order for production), Plaintiffs still had not produced the outstanding documents. As the deadline to file our pre-motion letter to Judge Carter on our motion for summary judgment was October 31, 2013, on October 30, 2013, we wrote to the Court to request an extension of time to file our pre-motion conference request to Judge Carter, which the Court extended until November 15, 2013. *See ECF No. 114.*

Subsequently, on November 5, 2013, I again wrote to Mr. Andrews asking about the status of the outstanding documents. On November 7, 2013, Mr. Andrews advised "[w]e are locating documents to the extent they exist." In light of the November 15, 2013 deadline to file the pre-motion letter, on that same date, we advised Mr. Andrews that if we did not receive the documents by November 11, 2013 that we would be writing to the Court. To date, we have not received the outstanding documents required to be produced by the Order.

Defendants now request permission to file a motion for sanctions against Plaintiffs pursuant to Fed. R. Civ. P. 37(b)(2) based on their failure to comply with the Order. In addition, Defendants request an extension of time to file their pre-motion letter with Judge Carter until this discovery dispute is resolved.

Thank you for your continued courtesies.

Respectfully submitted,  
Kaufman Dolowich & Voluck, LLP

  
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